

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)	
)	
)	
CARL HENNING, M.D.)	Case No. 12-2012-225310
)	
Physician's and Surgeon's)	
Certificate No. G 10081)	
)	
Respondent.)	
_____)	


DECISION

The attached Stipulated Surrender of License and Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 24, 2013

IT IS SO ORDERED September 17, 2013

MEDICAL BOARD OF CALIFORNIA

By: 
Kimberly Kirchmeyer
Interim Executive Director

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5539
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 **CARL HENNING, M.D.**

12 1851 Ridge Road
13 Ukiah, CA 95482

14 Physician's and Surgeon's Certificate No. G10081

15 Respondent.

Case No. 12-2012-225310

OAH No. 2013070138

**STIPULATION FOR SURRENDER OF
CERTIFICATE**

16 In the interest of a prompt and speedy resolution of this matter, consistent with the public
17 interest and the responsibility of the Medical Board of California, Department of Consumer
18 Affairs, (hereinafter, the "Board"), the parties hereby agree to the following Stipulation for
19 Surrender of Certificate which will be submitted to the Board for its approval and adoption as the
20 final disposition of Case No. 12-2012-225310.

21 1. Kimberly Kirchmeyer ("Complainant") is the Interim Executive Director of the
22 Medical Board of California, Department of Consumer Affairs, who brought this action solely in
23 her official capacity. She is represented in this matter by Kamala D. Harris, Attorney General of
24 the State of California, by Lawrence Mercer, Deputy Attorney General.

25 2. Carl Henning, M.D. ("Respondent"), being fully aware of his right to be represented
26 by an attorney, at his own expense, elects to represent himself in this matter.

27 3. On or about September 25, 1964, the Medical Board of California issued Physician's
28 and Surgeon's Certificate Number G10081 to Carl Henning, M.D. (Respondent). Said license is

1 current and valid and, unless renewed, will expire on January 31, 2015. On August 8, 2013, said
2 certificate was suspended pursuant to an Interim Suspension Order, pending an administrative
3 hearing on the charges contained in Accusation 12-2012-225310.

4 JURISDICTION

5 4. Accusation No. 12-2012-225310 ("Accusation") was filed before the board and is
6 currently pending against Respondent. The Accusation, together with all other statutorily
7 required documents, was duly served on Respondent at his address of record. A copy of
8 Accusation No. 12-2012-225310 is attached as Exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read and understands the charges and allegations in
11 Accusation No. 12-2012-225310. Respondent has also carefully read and understands the effects
12 of this Stipulation for Surrender of Certificate.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
17 the attendance of witnesses and the production of documents; the right to reconsideration and
18 court review of an adverse decision; and all other rights accorded by the California
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 ACKNOWLEDGMENTS

23 8. Respondent does not contest that, at an administrative hearing, complainant could
24 establish a *prima facie* case with regard to the charges in the Accusation. Respondent hereby
25 gives up his right to contest these charges and he agrees that his Physician's and Surgeon's
26 Certificate is subject to discipline pursuant to section 822 of the Business and Professions Code.

1 9. Respondent desires and agrees to surrender his Physician's and Surgeon's Certificate
2 for the Board's formal acceptance, thereby giving up his right to practice medicine in the State of
3 California.

4 **RESERVATION**

5 10. The admissions made by Respondent herein are only for the purposes of this
6 proceeding or any other proceedings in which the Medical Board of California or other
7 professional licensing agency in any state is involved, and shall not be admissible in any other
8 criminal or civil proceedings.

9 **CONTINGENCY**

10 11. This Stipulation shall be subject to the approval of the Board. Respondent
11 understands and agrees that Board staff and counsel for Complainant may communicate directly
12 with the Board regarding this Stipulation, without notice to or participation by Respondent. If the
13 Board fails to adopt this Stipulation as its Order in this matter, the Stipulation shall be of no force
14 or effect; it shall be inadmissible in any legal action between the parties; and the Board shall not
15 be disqualified from further action in this matter by virtue of its consideration of this Stipulation.

16 **STIPULATION AND ORDER**

17 **IT IS THEREFORE STIPULATED AND ORDERED** as follows:

18 1. **SURRENDER** Respondent hereby agrees that he will surrender his wall and wallet
19 Physician's and Surgeon's Certificates and all other indicia of his right to practice medicine in the
20 State of California to the Board or its representative on or before the effective date of this
21 decision, and the Board agrees to accept this surrender in resolution of this matter.

22 2. **REINSTATEMENT** Respondent fully understands and agrees that if he ever files
23 an application for re-licensure or reinstatement in the State of California, the Board shall treat it
24 as a petition for reinstatement. Respondent must comply with all the laws, regulations and
25 procedures for reinstatement of a revoked license in effect at the time any petition is filed,
26 including but not limited to Business and Professions Code section 823, and he understands and
27 agrees that all of the allegations and causes for discipline contained in Accusation No. 12-2012-
28 225310 will be deemed to be true, correct and admitted by him for purposes of the Board's

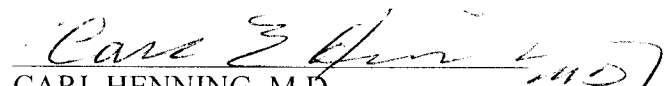
1 determination whether to grant or deny the petition. Respondent agrees that he will not petition
2 for reinstatement for at least one (1) year following the effective date of this decision.
3 Respondent hereby waives any time-based defense he might otherwise have to the charges
4 contained in Accusation No. 12-2012-225310 including, but not limited to, the equitable defense
5 of laches.

6 3. Respondent understands that by signing this Stipulation, he is enabling the Board to
7 issue its order accepting the surrender of his license without further process. He further
8 understands that upon acceptance of this Stipulation by the Board, he will no longer be permitted
9 to practice as a physician and surgeon in California.

10
11 **ACCEPTANCE**

12 I, Carl Henning, M.D., have carefully read the above Stipulation for Surrender of
13 Certificate, and enter into it freely and voluntarily and with full knowledge of its force and effect,
14 do hereby agree to surrender my Physician's and Surgeon's Certificate no. G10081 to the Medical
15 Board of California for its formal acceptance. By signing this Stipulation to surrender my license,
16 I recognize that as of the effective date of its formal acceptance by the Board, I will lose all rights
17 and privileges to practice as a physician and surgeon in the State of California and, if I have not
18 already done so, I also will cause to be delivered to the Board both my license and wallet
19 certificates on or before the effective date of the decision.

20 Dated: 8/22/2013

21
22 
23 CARL HENNING, M.D.
24 Respondent
25
26
27
28

ENDORSEMENT

The foregoing Stipulation for Surrender of Certificate is respectfully submitted for consideration by the Medical Board of California, Department of Consumer Affairs.

Dated: 9/3/2013

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General



LAWRENCE MERCER
Deputy Attorney General
Attorneys for Complainant

SF2013404856
40745968.doc

EXHIBIT A

1 KAMALA D. HARRIS
2 Attorney General of California
3 JOSE R. GUERRERO
4 Supervising Deputy Attorney General
5 LAWRENCE MERCER
6 Deputy Attorney General
7 State Bar No. 111898
8 455 Golden Gate Avenue, Suite 11000
9 San Francisco, CA 94102-7004
10 Telephone: (415) 703-5539
11 Facsimile: (415) 703-5480
12 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 15 20 13
BY Dick ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 12-2012-225310
OAH No. 2013070138

11 **CARL HENNING, M.D.**

12 1851 Ridge Road
13 Ukiah, CA 95482

ACCUSATION

14 Physician's and Surgeon's Certificate No. G10081

15 Respondent.

16 Complainant alleges:

17 PARTIES

18 1. Kimberly Kirchmeyer (Complainant) brings this Accusation (Accusation) solely in
19 her official capacity as the Interim Executive Director of the Medical Board of California,
20 Department of Consumer Affairs.

21 2. On or about September 25, 1964, the Medical Board of California issued Physician's
22 and Surgeon's Certificate Number G10081 to Carl Henning, M.D. (Respondent). Said license is
23 current and valid and, unless renewed, will expire on January 31, 2015. On August 8, 2013, an
24 Interim Suspension Order was issued against the certificate, which suspension shall continue until
25 such time as a decision on the charges in this Accusation is issued by the Medical Board.

26 //

27 //

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board¹) under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 of the Code provides, in pertinent part, that the Medical Board shall have responsibility for:

“(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

(b) The administration and hearing of disciplinary actions.

(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board. . .”

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2228 of the Code provides that a probation imposed by the Board may include, but is not limited to the following:

“(a) Requiring the licensee to obtain additional professional training and to pass an examination upon the completion of training. The examination may be written or oral, or both, and may be a practical or clinical examination, or both, at the option of the board or the administrative law judge.”

¹ As used herein, the term “board” means the Medical Board of California. As used herein, “Division of Medical Quality” shall also be deemed to refer to the board.

“(b) Requiring the licensee to submit to a complete diagnostic examination by one or more physicians and surgeons appointed by the board. If an examination is ordered, the board shall receive and consider any other report of a complete diagnostic examination given by one or more physicians and surgeons of the licensee’s choice.”

“(c) Restricting or limiting the extend, scope, or type of practice of the licensee, including requiring notice to applicable patients that the licensee is unable to perform the indicated treatment, where appropriate.”

7. Section 820 provides as follows:

“Whenever it appears that any person holding a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to Section 822.”

8. Section 822 of the Code provides that if the Board determines that a licensee's ability to practice her profession safely is impaired because the licensee is mentally ill, or physically ill affecting competency, the licensing agency may take action by revoking or suspending the license, placing the licensee on probation, or taking such other action as the licensing agency in its discretion deems proper.

CAUSE FOR DISCIPLINARY ACTION

(Mental/Physical Illness Affecting Competency)

9. Respondent is subject to disciplinary action under section 822 of the Code in that respondent is unable to practice medicine safely due to diagnosed cognitive impairment. The circumstances are as follows:

10. Respondent Carl Henning, M.D., is a physician and surgeon specializing in orthopedic surgery. He has been licensed by the Board since 1964.

11. On July 27, 2012, the Board received an 805 report² from a medical center where respondent held surgical privileges. The report advised that respondent had voluntarily resigned his surgical privileges while under investigation for health concerns. The report stated that an investigation was initiated based on concerns related to respondent's health status and his ability to safely perform surgery.

12. On August 31, 2012, the Board received copies of the documentation prepared in connection with medical staff investigation pertaining to respondent. That documentation included reports that OR nursing staff had raised concerns about respondent's competency in two surgical procedures performed by him in June 2012. In each instance, nursing staff felt that respondent was cognitively impaired, as evidenced by the considerable difficulties he encountered in performing routine surgeries of the knee and the anterior cruciate ligament (ACL). In the first procedure, respondent was observed to be cleaning out and prepping the wrong compartment of the knee -- i.e., a compartment that had no apparent pathology -- until this error was brought to his attention. Subsequently, when performing the same procedure on another patient, respondent appeared unable to remember the specific steps in order and required coaching from the vendor representative and staff members. Also in the second case, during a difficult threading procedure, a bioabsorbable orthopedic screw was misplaced somewhere behind the knee joint and could not be located.

13. The medical center's investigative materials also included a report of an evaluation by a psychiatrist and neuropsychological testing performed by a neuropsychologist, which were examinations that respondent had undergone at the request of the medical staff. These reports concluded that respondent had measurable cognitive impairment and that his impairment adversely affected his ability to safely perform some surgical procedures. The psychiatric evaluator questioned respondent regarding the two surgical cases under review, but respondent insisted that the procedures had gone well. Based upon his lack of insight into his cognitive

² Business and Professions Code §805 mandates that a peer review body report to the Board within 15 days of the denial, revocation, suspension or restriction of a physician's staff privileges.

1 slippage, as well as his inability to recognize the reported errors, the evaluator concluded that
2 respondent could not be relied upon to limit his practice to procedures still within his
3 competency.

4 14. On May 23, 2013, respondent voluntarily appeared for a psychiatric evaluation by a
5 psychiatrist selected by the Medical Board. Following that examination, the evaluator concluded
6 "with reasonable medical certainty that Dr. Henning is impaired in his cognitive functioning and
7 this adversely affects his ability to practice medicine safely. Further, it is my opinion that Dr.
8 Henning is unable to practice medicine safely at this time, as he continues to deny memory and
9 information processing difficulties."

10 15. Respondent's license is subject to discipline pursuant to Sections 822 and 2227 of
11 the Code in that, due to diagnosed cognitive impairment, respondent is impaired in his ability to
12 practice medicine.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board issue a decision:

16 1. Revoking or suspending Physician's and Surgeon's Certificate Number G10081
17 issued to Carl E. Henning, M.D.

18 2. Ordering respondent to pay probation costs in the event that he is placed on
19 probation;

20 3. Revoking, suspending, or denying approval of respondent's authority to supervise
21 physician assistants; and

22 4. Taking such other and further action as deemed necessary and proper.

23
24
25 DATED: August 15, 2013

for


KIMBERLY KIRCHMEYER
Interim Executive Officer
Medical Board of California
Department of Consumer Affairs
State of California
Complainant